

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. 3:17-cv-00643-FDW-DCK**

ERIC KINSINGER and)
DENISE KINSINGER,)
Plaintiffs,)
vs.)
SMARTCORE, LLC;)
SMARTCORE ELECTRIC, LLC;)
SMARTCORE ELECTRICAL SERVICES, LLC;)
SMARTCORE, LLC GROUP HEALTH)
BENEFIT PLAN; STEVEN MATTHEW)
GOOD; and WILLIAM H. WINN JR.,)
Defendants.)

**FILED
CHARLOTTE, NC**

JUN 04 2019

US DISTRICT COURT
WESTERN DISTRICT OF NC

CONSENT JUDGMENT

This case came on for hearing on June 4, 2019 before the Honorable Frank D. Whitney, Chief Judge of the United States District Court for the Western District of North Carolina. Present were Plaintiffs Eric Kinsinger and Denise Kinsinger (“Plaintiffs”) and Defendants SmartCore, LLC (“SmartCore”); SmartCore Electric, LLC; SmartCore Electrical Services, LLC; SmartCore, LLC Group Health Benefit Plan (“Plan”); Steven Matthew Good; and William H. Winn, Jr. (collectively, “Defendants”) and counsel for each of the parties except Steven Matthew Good, who appeared *pro se*. The Plaintiffs and Defendants have agreed to resolve Plaintiffs’ Third Cause of Action, payment of the medical expenses with respect to Plaintiffs’ claim for benefits under ERISA § 502(1)(1)(B); 29 U.S.C. § 1132(a)(1)(B) except for (i) the amount of attorneys’ fees and costs to which Plaintiff may be entitled under Section 502(g)(1), 29 U.S.C. § 1132(g)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”),

and (ii) if Plaintiff seeks an award of prejudgment and post-judgment interest, whether Plaintiff is entitled to such an award or any other relief.

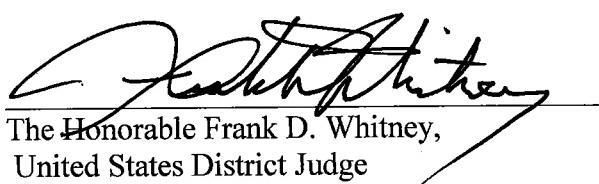
All Defendants consent and stipulate that should any Defendant file for bankruptcy or other debtor protection, Defendants consent and stipulate to (i) the lifting of the automatic stay in such filing with respect to this case (Civil Action No. 3:17-cv-00643-FDW-DCK) (“Case”), (ii) a motion to refer the Case back to the Honorable Chief Judge Frank D. Whitney (“Court”), and (iii) that the Case is a related case to the present matter before the Court. The Court, by its signature below, agrees to accept the referral for this Case and will take all actions necessary to lift any automatic stay or other impediment to its exercise of jurisdiction over the Case.

Plaintiffs and Defendants now consent to entry of a Court Judgment by this Court in accordance herewith as follows:

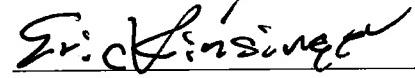
1. The stipulations of fact entered by all parties as Document Number 109 on May 22, 2019 are hereby incorporated as a matter of law.
2. Judgment is entered in favor of Plaintiffs against all Defendants jointly and severally on Count III of their Complaint for wrongful denial of benefits under 29 U.S.C. §1132(a)(1)(B).
3. Within thirty (30) days following the entry of this Consent Judgment by the Court, the parties will make best efforts to seek written verification from the medical providers who treated Plaintiff in January 2016 that no balance remains due to the providers with respect to the claims incurred by Plaintiff. To the extent any unpaid balance on the underlying medical procedure remains due to the providers who treated Plaintiff Denise Kinsinger in January 2016, Defendants will indemnify and hold Plaintiffs harmless from such unpaid balance due.

4. The Court will separately determine the amount of attorneys' fees, pre-judgment interest, post-judgment interest, and any other relief, if any, to which Plaintiffs may be entitled.
5. Within 30 days of entry of this Consent Judgment, Plaintiff may file a petition for fees, interest, and costs. Defendants will submit a response to the petition within 14 days after it is filed. Plaintiffs will submit any reply brief within 7 days after Defendants' response brief. Briefing with respect to Plaintiffs' petition for fees and cost shall be done in accordance with LCvR 7.1, WDNC.
6. This Consent Judgment resolves all of Plaintiffs' claims asserted in Plaintiffs' Third Cause of Action against Defendants with the exception of (i) the amount of reasonable attorneys' fees and costs to which Plaintiff may be entitled under ERISA § 502(g)(1); and (ii) if Plaintiff seeks an award of prejudgment and post-judgment interest, whether Plaintiff would be entitled to such an award under ERISA.
7. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Judgment and Order.

Dated: June 4, 2019.

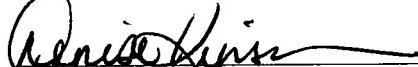


The Honorable Frank D. Whitney,
United States District Judge



Eric Kinsinger

Eric Kinsinger
Plaintiff



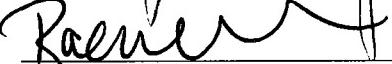
Denise Kinsinger

Denise Kinsinger
Plaintiff


Steven Matthew Good
*For himself and on behalf of SmartCore,
LLC; SmartCore Electric, LLC; SmartCore
Electrical Services, LLC; and SmartCore,
LLC Group Health Benefit Plan.*


William H. Winn Jr.
*For himself and on behalf of SmartCore,
LLC; SmartCore Electric, LLC; SmartCore
Electrical Services, LLC; and SmartCore
LLC Group Health Benefit Plan.*


Bryan L. Tyson


Rachel C. Matesic
Marcellino & Tyson, PLLC
2820 Selwyn Ave., Suite 350
Charlotte, NC 28209
(704) 919-1519 (telephone)
(980) 219-7025 (facsimile)
E-mail: bryan@yourncattorney.com
E-mail: rachel@yourncattorney.com

Attorneys for Plaintiffs


Marc E. Gustafson, N.C. State Bar No.
34429
Bell, Davis & Pitt, P.A.
227 W. Trade Street, Suite 1800
Charlotte, NC 28202
Telephone: (704) 227-0400
Email: mgustafson@belldavispitt.com

Attorney for Defendant William Winn


Eric Spengler (N.C. Bar #47165)
SPENGLER & AGANS, PLLC
352 N. Caswell Road
Charlotte, NC 28204
eric@spengleraganslaw.com
(704) 910-5469 (phone)
(704) 730-7861 (fax)

Attorney for SmartCore, LLC; SmartCore
Electric, LLC; SmartCore Electrical
Services, LLC; and SmartCore, LLC Group
Health Benefit Plan.